

State of South Dakota

SEVENTY-SIXTH SESSION LEGISLATIVE ASSEMBLY, 2001

445E0168

SENATE BILL NO. 228

Introduced by: Senators Staggers, Apa, de Hueck, Drake, Greenfield, Koetzle, Madden, and Sutton (Dan) and Representatives Gillespie, Begalka, Davis, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, McCoy, Teupel, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the
2 purposes of determining whether they may have been wrongfully convicted.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person confined in the state penitentiary for a conviction of murder or any
5 felony under chapter 22-22 may petition a circuit court to order deoxyribonucleic acid (DNA)
6 testing on evidence relevant to that person's case and on a sample drawn from that person if the
7 evidence in question has not already been subjected to DNA testing which was introduced at a
8 prior proceeding. For the purposes of this petition, the petitioner is not entitled to court-
9 appointed counsel. The court shall schedule a hearing on the petition within one hundred eighty
10 days. The court on hearing the petition shall consider:

11 (1) The likelihood of sufficient DNA being recovered from the evidence to generate a
12 sufficient sample for testing; and

13 (2) The likelihood that the results of DNA testing, if results do not match the DNA of the
14 petitioner, would, if introduced at trial, produce sufficient reasonable doubt to prevent

1 conviction.

2 If the court finds sufficient evidence, it shall order DNA testing to be done at the state's
3 expense. The sample from the petitioner shall be collected by a health professional licensed or
4 certified to do so. The sample from the evidence shall be collected by a competent professional.
5 If the court determines that the results of testing, if introduced at trial, might reasonably produce
6 sufficient doubt regarding the petitioner's guilt or result in a reversal of the petitioner's
7 conviction, the court shall immediately order a trial de novo. If the test results do not result in
8 a new trial or if the petitioner is reconvicted and that conviction, if appealed, is upheld, the
9 petitioner shall reimburse the state for the costs of the testing.

10 Section 2. Any law enforcement agency of the state shall preserve any DNA evidence in its
11 possession that it knows or should know exists, if that evidence is relevant to any conviction of
12 murder or of any felony under chapter 22-22. No law enforcement agency needs to preserve
13 DNA evidence if the conviction has been overturned and the state has exhausted its appeals or
14 declined to appeal, the convicted person has completed the sentence and has not indicated any
15 intention to appeal, or the convicted person has died without filing an appeal.

16 Section 3. This Act is effective on January 1, 2002.